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ARISTA RECORDS LLC; UMG
RECORDINGS, INC.; and SONY BMG
MUSIC ENTERTAINMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DIVISION

ARISTA RECORDS LLC, a Delaware limited
liability company; UMG RECORDINGS, INC.,
a Delaware corporation; and SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

ORIGINAL
FILED
FEB 21 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

SI

CASE NO. **08** **1049**

**EX PARTE APPLICATION FOR LEAVE
TO TAKE IMMEDIATE DISCOVERY**

EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Case No. _____

#35725 v1

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26
2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum
3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 Plaintiffs, record companies who own the copyrights in the most popular sound recordings in
6 the United States, seek leave of the Court to serve limited, immediate discovery on a third party
7 Internet Service Provider ("ISP") to determine the true identity of Defendant John Doe, who is being
8 sued for direct copyright infringement.¹

9 As alleged in the complaint, Defendant John Doe, without authorization, used an online
10 media distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted
11 works to the public. Although Plaintiffs do not know the true name of Defendant John Doe,
12 Plaintiffs have identified Defendant by a unique Internet Protocol ("IP") address assigned to
13 Defendant on the date and time of Defendant's infringing activity.

14 Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that identify
15 Defendant's true name, current (and permanent) address and telephone number, e-mail address, and
16 Media Access Control ("MAC") address. Without this information, Plaintiffs cannot identify
17 Defendant John Doe or pursue their lawsuit to protect their copyrighted works from repeated
18 infringement.

19 Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a Rule
20 26(f) conference where there are no known defendants with whom to confer.
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25 ¹ Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to
26 personally serve Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of
27 Court pursuant to Fed. R. Civ. P. 5(b)(2)(C) ("If the person served has no known address, [service
28 under Rule 5(a) is made by] leaving a copy with the clerk of the court.") and will serve Defendant's
ISP with a copy of this motion. Additionally, if the Court grants this motion, Plaintiffs will ask the
ISP to notify the Defendants of the subpoena and provide Defendant with an opportunity to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct the
2 foregoing requested discovery immediately.

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5 Dated: February 21, 2008

HOLME ROBERTS & OWEN LLP

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7 By


MATTHEW FRANKLIN JAKSA

Attorney for Plaintiffs

ARISTA RECORDS LLC; UMG RECORDINGS,
INC.; and SONY BMG MUSIC
ENTERTAINMENT

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Plaintiffs,

v.

JOHN DOE,

Defendant.

08 1049

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' EX PARTE APPLICATION
FOR LEAVE TO TAKE IMMEDIATE
DISCOVERY**

[PROPOSED] ORDER GRANTING PLAINTIFFS' EX PARTE APPLICATION

Case No. _____

#35727 v1

1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery,
2 the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

3 ORDERED that Plaintiffs may serve immediate discovery on University of
4 California, Santa Cruz to obtain the identity of Defendant John Doe by serving a Rule 45 subpoena
5 that seeks documents that identify Defendant John Doe, including the name, current (and permanent)
6 address and telephone number, e-mail address, and Media Access Control addresses for Defendant.
7 The disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B).

8 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in
9 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting
10 Plaintiffs' rights under the Copyright Act.
11

12 DATED: _____

13 By: _____
14 United States District Judge
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